

**Department of Personnel Administration
Memorandum**

TO: Personnel Management Liaisons (PML)

SUBJECT: Bargaining Unit 3 Arbitration Decision on Alternate Work Weeks	REFERENCE NUMBER: 2005-007
DATE ISSUED: 02/01/05	SUPERSEDES:

This memorandum should be forwarded to:

**Employee Relations Officers
Personnel Officers**

FROM: Department of Personnel Administration
Labor Relations Division

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As a result of a recent arbitration decision concerning alternate work week (AWW) schedules (attached), departments employing Bargaining Unit 3 rank-and-file employees shall adhere to the procedures outlined below, effective as indicated:

- Effective July 1, 1999, departments could have charged the appropriate hours of leave time for employees on AWW schedules. All departments that have not been charging the appropriate hours for Unit 3 employees on AWW schedules must begin to adjust employees' leave balances beginning January 1, 2005.
- Effective January 1, 2004, the Department of Corrections (CDC) must continue to implement the directive from the Personnel Liaison Unit (Office of Personnel Management) dated January 20, 2004. Questions regarding CDC's implementation should be directed to the assigned Personnel Liaison Unit analyst.

The arbitration decision in DPA No. 02-03-0122 (*California State Employees Association (Olsen) v. Department of Corrections*) involved an Academic Instructor (Bargaining Unit 3) working a 4-10-40 alternate work week schedule. The question in this case was whether to charge the employee ten hours while he was on sick leave or vacation.

The arbitrator decided in the State's favor. Arbitrator Alexander Cohn held that the 1999-2001 Bargaining Unit 3 MOU established formal alternate work weeks under Sections 19.1 B (Hours of Work) and 19.6 (Flexible Work Hours). Section 19.1F.5¹ of the MOU reads, "*FLSA-exempt/excluded employees shall not be charged paid leave or docked for absences in less than whole-day increments.*" Arbitrator Cohn found that "*whole-day increments*" must be interpreted as the number of hours an employee is regularly scheduled to work in a day, e.g., an employee's workday could be either 4, 8, 9, or 10 hours.

¹ DPA's Web site version of the Unit 3 MOU inadvertently omitted the letter "F" denoting the Article 19 subsection "Workweek group policy for FLSA-Exempt/Excluded Employees."

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In other words, it has been lawful since July 1, 1999, to charge an employee on a 4-10-40 AWW schedule ten hours when the employee is absent from work for an entire work day.

If you have questions, please contact Kathryn Cervantes Peterson, listed in the Contact section above.

/s/Dave Gilb

Dave Gilb
Chief of Labor Relations